Supreme Court, U.S.
FILED
AUG 25 2006
CLERK

No. 06-7

IN THE
Supreme Court of the United States

CLEMENTON BOARD OF EDUCATION,

Petitioner

v.

P.N., an infant, individually and by his parent, M.W.,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

RUTH LOWENKRON, *Counsel of Record*
Education Law Center
60 Park Place, #300
Newark, NJ 07102
(973) 624-1815

JAMIE EPSTEIN, *Of Counsel*
1101 Route 70 West
Cherry Hill, NJ. 08002
(856) 428-0710

Attorneys for Respondents

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Whether the Petition should be denied because the Third Circuit's holding that the judicially enforceable final administrative consent orders convey "prevailing party" status under the Individuals with Disabilities Education Act is correct, is consistent with the decisions of this Court and does not conflict with the decisions of any other circuit court?

2. Whether the Petition should be denied because the Third Circuit's holding that Respondents were prevailing parties because they succeeded on all significant issues of the litigation is correct, is consistent with the decisions of this Court and does not conflict with the decisions of any other circuit court?

TABLE OF CONTENTS

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED.....i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

COUNTER-STATEMENT OF THE CASE 1

REASONS FOR DENYING THE PETITION 2

I. The Third Circuit's Holding that Respondents Satisfied the *Buckhannon* Prevailing Party Standard by Obtaining Judicially Enforceable Final Administrative Consent Orders does not Conflict with the Decisions of this Court or any Circuit Court.....2

II. The Third Circuit – Consistent with the Decisions of this Court and Every Other Circuit Court to Address the Issue – Properly Held that Respondents were Prevailing Parties because they Succeeded on all Significant Issues of the Litigation.....6

CONCLUSION 8

TABLE OF AUTHORITIES

Federal Cases

A.R. v. New York City Dep't of Educ., 407 F.3d 65 (2d Cir. 2005).....3

Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep't of Health and Human Resources, 532 U.S. 598 (2001).....2 - 5

Christina A. v. Bloomberg, 315 F.3d 990 (8th Cir. 2003)...3,4

Farrar v. Hobby, 506 U.S. 103 (1992).....6

Hensley v. Eckerhart, 461 U.S. 424 (1983).....6

Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994).....3, 5

Linda T. v. Rice Lake Area Sch. Dist., 417 F.3d 704 (7th Cir. 2005).....7

Monticello Sch. Dist. No. 25 v. George L., 102 F.3d 895 (7th Cir. 1996).....7

Park v. Anaheim Union High Sch. Dist., 444 F.3d 1149 (9th Cir. 2006).....7

Rice Services, Ltd. v. United States, 405 F.3d 1017 (D.C. Cir. 2005).....5

Shapiro v. Paradise Valley Unified Sch. Dist. No. 69, 374 F.3d 857 (9th Cir. 2004).....7

Smith v. Fitchburg Pub. Sch., 401 F.3d 16 (1st Cir. 2005) 4

Smyth v. Rivero, 282 F.3d 268 (4th Cir. 2002).....5

Texas State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782 (1989).....6

Federal Statutes

20 U.S.C. § 1400.....1

20 U.S.C. § 1415(i)(3)(B)(i).....2

42 U.S.C. § 1983.....3, 4

Federal Rules

Fed. R. Civ. P. 23(e).....4

State Regulations

N.J.A.C. 1:1-19.1.....4

COUNTER-STATEMENT OF THE CASE

Respondent P.N. incorporates by reference the facts set forth in the unanimous Third Circuit opinion. P.N. highlights the fact that, in Consent Orders signed by the Administrative Law Judge and incorporating the parties' settlement, he received all the relief and more that he requested from Petitioner Clementon Board of Education ("C.B.E.") in his petition for a due process hearing under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq.

P.N. sought the following relief: a) immediate reinstatement to school; b) reimbursement for past mental health services; c) behavioral services; d) payment for his psychologist to assist in determining the behavioral services; and d) payment for him to be independently evaluated. Pet. App. 2a-3a.

P.N. obtained the following relief: a) immediate and unconditional reinstatement to school; b) reimbursement for all past psychiatric and psychological services; c) behavioral services; d) payment for his psychologist to participate in developing the behavioral services; e) independent psychiatric, psychological, learning and social work evaluations; f) transportation to and from all evaluations; and g) reimbursement for the cost of his psychologist participating at an "IEP meeting." Pet. App. 3a-5a.

REASONS FOR DENYING THE PETITION

C.B.E. has cited neither a conflict with a decision of this Court, nor a conflict among the circuit courts, regarding any issue material to this case. The Petition should therefore be denied.

I. The Third Circuit's Holding that Respondents Satisfied the *Buckhannon* Prevailing Party Standard by Obtaining Judicially Enforceable Final Administrative Consent Orders does not Conflict with the Decisions of this Court or any Circuit Court

P.N.'s right to prevailing party attorney's fees is authorized by the Individuals with Disabilities Education Act which provides: "In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs ... to a prevailing party who is the parent of a child with a disability...." 20 U.S.C. § 1415(i)(3)(B)(i). This Court has held that a "prevailing party" is "one who has been awarded some relief by the court." *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep't of Health and Human Resources*, 532 U.S. 598, 603 (2001). A party who has obtained a settlement agreement is entitled to "prevailing party" status, provided there was a "judicially sanctioned change in the legal relationship of the parties." *Id.* at 604-05.

C.B.E. takes the novel position, unsupported by precedent, that an administrative consent order does not meet the "judicially sanctioned" requirement -- merely because it is enforceable by a court, rather than by the administrative law judge who issued it. Pet. 9. Both the District Court and the Third Circuit, relying on Supreme Court and other circuit court cases, resoundingly and correctly rejected C.B.E.'s argument. Moreover, C.B.E.'s claim that the Third Circuit decision is at odds with Supreme Court and other circuit court decisions is wholly without merit.

The Third Circuit, relying on this Court's opinion in

Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994), first recognized that settlement agreements are enforceable by a court:

> 'if the parties' obligation to comply with the terms of the settlement agreement had been made part of the order of dismissal... [i]n that event, a breach of the agreement would be a violation of the order and ... jurisdiction to enforce the agreement would therefore exist.'

Pet. App. 10a, *citing Kokkonen*, 511 U.S. at 381. Then, citing to the Second Circuit decision in *A.R. v. New York City Dep't of Educ.*, 407 F.3d 65 (2d Cir. 2005) – which is on all fours with *P.N.* but was inexplicably omitted from the Petition by C.B.E. – the Third Circuit determined that an administrative order that incorporates the terms of the settlement pursuant to *Kokkonen* complies with the "judicial *imprimatur*" requirement of *Buckhannon* as the order is "enforceable through an action under 42 U.S.C. § 1983 and under state law." Pet. App. 13a. In addition, again citing to *A.R.*, the Third Circuit stated that "'the fact that IHOs [(the equivalent of administrative law judges)], as is common in administrative procedures, have no enforcement mechanism ... is irrelevant, at least so long as judicial enforcement is available.'" Pet. App. 11a-12a, *citing A.R.*, 407 F.3d at 78, n.13. The Third Circuit thus held that "'the combination of administrative *imprimatur*, the change in the legal relationship of the parties arising from it, and subsequent judicial enforceability, render such a winning party a 'prevailing party' under Buckhannon's principles.'" Pet. App. 11a, *citing A.R.*, 407 F.3d at 76.

Notwithstanding the Third Circuit's reliance on *Kokkonen* and *A.R.*, C.B.E. argues that there is a conflict with the Supreme Court and other circuit courts. Clearly no conflict exists.

C.B.E. erroneously argues that the Eighth Circuit's decision in *Christina A. v. Bloomberg*, 315 F.3d 990 (8th Cir.2003), Pet. 6-7,

is incompatible with the *P.N.* decision. *Christina A.* does not even concern a final administrative consent order; rather, it concerns a district court's approval of a class action settlement that the Eighth Circuit found was "merely an exercise in compliance with Rule 23(e)." *Id.* at 992. In addition, unlike the consent order in *P.N.*, in *Christina A.*, "no specifically enumerated contract terms were incorporated into the court's order," *id.* at 993, and the order would "not support a citation for contempt," *id.* Moreover, the consent orders in *P.N.*, "unlike those in *Christina A.*," were enforceable through an action under 42 U.S.C. § 1983 and under state law. Pet. App. 13a.

In fact, the *Christina A.* decision comports entirely with the *P.N.* decision. The *Christina A.* Court, like the *P.N.* Court, recognized that an order that incorporates the terms of the settlement, and is judicially enforceable, constitutes a *Buckhannon*-worthy consent decree. *Christina A.*, 315 F.3d at 993.[1]

C.B.E. also incorrectly claims that the First Circuit's decision in *Smith v. Fitchburg Pub. Sch.*, 401 F.3d 16 (1st Cir. 2005), conflicts with the Third Circuit's view of judicial *imprimatur*. Pet. 7. Once again, that case does not involve a final administrative consent order. Rather, as C.B.E. itself states, Pet. 7, it involves a private settlement and a dismissal order. *See Smith*, 401 F.3d at 21. Moreover, the Third Circuit's opinion is squarely in agreement with the First Circuit's view in *Smith* that, "[i]t is **undisputed** that, for purposes of the IDEA, a party may 'prevail' in an administrative hearing--thus the appropriate involvement of a ... hearing officer can provide the necessary 'judicial *imprimatur*.'" *Id.* at 22, n. 9 (emphasis added).

---

1 The fact that orders subject to N.J.A.C. 1:1-19.1 and Fed. R. Civ. P. 23(e) may, as C.B.E. suggests, be similar in that they both are "required," Pet. 7, does not negate the fact that the orders in this case that were subject to N.J.A.C. 1:1-19.1 are judicially enforceable, as set forth above, while the order in *Christina A.* that was subject to Fed. R. Civ. P. 23(e), was not.

In addition, the Third Circuit's holding in *P.N.* is in accordance with the First Circuit's holding that final administrative orders that incorporate the parties' settlements confer the judicial *imprimatur* necessary for prevailing party status. *See Smith*, 401 F.3d at 23 (recognizing that a "private settlement ... incorporated into a consent decree" would "satisfy the requirements of a narrow reading of *Buckhannon*").

C.B.E.'s attempt to show a conflict with the D.C. Circuit, Pet. 7-8, is equally unavailing. Here too, the court in *Rice Services, Ltd. v. United States*, 405 F.3d 1017 (D.C. Cir. 2005) recognized, as did the Third Circuit in *P.N.*, that an enforceable consent order passes *Buckhannon* muster, *Rice Services*, 405 F.3d. at 1026, and, again, the order at issue, unlike the *P.N.* orders, did not incorporate the terms of settlement, but rather dismissed the case as "essentially moot," *Rice Services*, 405 F.3d. at 1026-27.

C.B.E. also erroneously maintains that the Fourth Circuit is in disagreement with *P.N.* Pet. 9. That contention is based on incorrectly reading *Smyth v. Rivero*, 282 F.3d 268 (4th Cir. 2002) to require – as a prerequisite for prevailing party status -- that the body that issues a consent order must itself have the power to enforce the order. In fact, the Fourth Circuit, citing *Kokkonen*, 511 U.S. at 381, held only that for a consent order to comply with *Buckhannon*, it must "incorporat[e] the terms of the agreement into that order **or** retain jurisdiction[]." *Id.* at 283 (emphasis added). Thus, the Third Circuit's reliance on the incorporation of the settlement terms in the *P.N.* orders comports precisely with the Fourth Circuit holding in *Smyth*.

The Third Circuit's holding -- that the *Buckhannon* prevailing party requirement was satisfied by the judicially enforceable administrative consent orders that incorporated the parties' settlement -- is in accord with the decisions of this Court and the other circuit courts. The Petition should therefore be denied.

II. The Third Circuit – Consistent with the Decisions of this Court and Every Other Circuit Court to Address the Issue – Properly Held that Respondents were Prevailing Parties because they Succeeded on all Significant Issues of the Litigation

The standard for determining whether a party is a "prevailing party" is well established by this court. Where parties obtain "some of the relief they sought," *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 793 (1989), they "'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust,'" *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (internal citations omitted). The only clear exception to the "generous formulation" of prevailing party status is where the plaintiff's success is "purely technical or *de minimus*." *Texas State Teachers*, 489 U.S. at 793. A "technical" or "*de minimus*" victory is one that does not alter the defendant's behavior towards a plaintiff. *Farrar v. Hobby*, 506 U.S. 103, 114 (1992). This Court has held that even "a plaintiff who wins nominal damages [of one dollar] is a prevailing party...." *Id.* at 112. To the extent the degree of relief is relevant, it is relevant only to the amount of the fee award, not to the fee award's availability. *Texas State Teachers*, 489 U.S. at 782.

The Third Circuit relied extensively on the *Hensley* -- *Texas State Teachers* -- *Farrar* trilogy in holding that P.N. was a prevailing party. Pet. App. 13a-18a. The *P.N.* Court held that

> Plaintiffs obtained orders from the ALJ requiring that each of ... [his] demands be met. The Orders benefited P.N. and forced CBE to change its behavior, thus altering their legal relationship. As such, the Orders meet the standards enunciated by the Supreme Court.

Pet. App. 15a-16a.

The Supreme Court prevailing party standards are also followed by all the other circuit court cases cited by C.B.E. All that is different amongst the courts is the ultimate fee determinations, but this, of course, is because the facts of each case differ. [2] C.B.E.'s argument that there is a conflict amongst the circuits regarding the prevailing party standard reflects nothing more than C.B.E.'s unhappiness with the results in this case, and the argument should not be credited.[3]

The cases C.B.E. claims conflict with the *P.N.* opinion, Pet. 10-12, are factually distinct. In *Linda T. v. Rice Lake Area Sch. Dist.*, 417 F.3d 704 (7th Cir. 2005), *Monticello Sch. Dist. No. 25 v. George L.*, 102 F.3d 895 (7th Cir. 1996) and *Park v. Anaheim Union High Sch. Dist.*, 444 F.3d 1149 (9th Cir. 2006), *panel rehearing and rehearing en banc requested* (May 8, 2006), the plaintiffs failed to prevail on almost all the issues in their cases and received minimal relief in relation to what was sought. P.N., in stark contrast, achieved success on every claim and obtained even more relief than he sought, including obtaining such significant relief as his unconditional reinstatement to school, numerous services from

---

2 It is instructive to look at a case which C.B.E. did not cite but which was issued by one of the circuits which C.B.E. claims to conflict with the *P.N.* decision. In *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 374 F.3d 857 (9th Cir. 2004), a Ninth Circuit case not cited by C.B.E., the plaintiff, like P.N., received more relief than did the plaintiff in the Ninth Circuit case cited by C.B.E., *Park v. Anaheim Union High Sch. Dist.*, 444 F.3d 1149 (9th Cir. 2006), *panel rehearing and rehearing en banc requested* (May 8, 2006). Notably, the *Shapiro* Court followed the same Supreme Court standards as did the *Park* Court– and as did the *P.N.* Court – but, in contrast to the *Park* Court, the *Shapiro* Court determined the plaintiff to be a prevailing party and rejected the defendant's *de minimus* argument. The difference between the *Park* and the *Shapiro* cases was the relief obtained, not the prevailing party standards followed.

3 Moreover, C.B.E.'s criticism of the results in this case employs a minimization of the relief awarded to P.N. Contrary to C.B.E.'s numerous statements to the effect that all P.N. received was $425, *see, e.g.*, Pet. i, ii and 15, P.N. in fact received extensive relief, as the Petition itself, with its three-page-long quote from the Consent Orders, recognizes. Pet. 2-4.

C.B.E. and financial reimbursement, all of which greatly changed the legal relationship of the parties.

The Third Circuit followed Supreme Court precedent in determining that the relief obtained by P.N. was not *de minimus*, and no conflict, let alone a conflict worthy of this Court's review, exists amongst the circuit courts regarding the *de minimus* standard. C.B.E.'s Petition should therefore be denied.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be denied.

Respectfully submitted,

RUTH LOWENKRON, *Counsel of Record*
Education Law Center
60 Park Place, #300
Newark, NJ. 07102
(973) 624-1815

JAMIE EPSTEIN, *Of Counsel*
1101 Route 70 West
Cherry Hill, NJ. 08002
(856) 428-0710

Attorneys for Respondents